

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 6th November, 2012

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LPA No.618/2012

UNION PUBLIC SERVICE COMMISSION

..... Appellant

Through: Mr. Naresh Kaushik with Ms. Vivya
Nagpal & Mr. Manoj Joshi, Advs.

Versus

R.K. JAIN

..... Respondent

Through: Mr. Ramesh K. Mishra, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 13th July, 2012 of the learned Single Judge of dismissal of W.P.(C) No.1243/2011 preferred by the appellant UPSC. The writ petition was preferred challenging the decision dated 12th January, 2011 of the Central Information Commission (CIC) established under the Right to Information Act, 2005. This appeal came up first on 7th September, 2012 and was adjourned to 9th October, 2012 and thereafter to 16th October, 2012. The respondent appeared on caveat and with consent we have heard the counsels finally.

2. The respondent, invoking the provisions of the Act had sought following information from the Public Information Officer (PIO) of the appellant UPSC:-

“(A) Please provide inspection of all records, documents, note sheets, manuscripts, records, reports, office memorandum, part files and files relating to the proposed disciplinary action and/or

imposition of penalty against Shri G.S. Narang, IRS, Central Excise and Customs Service Officer of 1974 Batch and also inspection of the records, files, etc., relating to the decision of the UPSC thereof Shri G.S. Narang is presently posted as Director General of Inspection Customs and Central Excise.

- (B) Please provide copies of all the note sheets and the final decision taken regarding imposition of penalty/disciplinary action and decision of UPSC thereof.”

The period for which aforesaid information was sought was in the application dated 9th June, 2009 stated as “from 16-10-1991 to 8-06-2009”.

3. The PIO of the appellant UPSC vide reply dated 26th June, 2009 declined to furnish the information sought, stating that it was of personal nature and disclosure thereof had no relationship to any public activity or interest and may also infringe upon the privacy of the individual concerned. Exemption provided under Section 8(1)(j) of the Act was invoked.

4. The respondent preferred an appeal against the aforesaid denial of information. In the Memorandum of Appeal dated 29th August, 2009 it was *inter alia* pleaded that the appellant UPSC does not carry any disciplinary proceedings itself but only provides opinion and forming of such opinion by the appellant UPSC is a public activity and the steps taken in forming that opinion were in public domain. The appellant UPSC before the first Appellate Authority contended that Shri G.S. Narang, to whom the information sought pertained, was a third party and for this reason also the information could not be disclosed. It was further contended that the advice

of the appellant UPSC is tendered in terms of Article 320(3)(c) of the Constitution of India and is not binding on the President of India.

5. The first Appellate Authority dismissed the appeal vide order dated 22nd September, 2009 reiterating that the information sought was of personal nature and disclosure thereof had no relationship to any public activity or interest and may infringe upon the privacy of the individual concerned. It was further held that the disclosure of such information was exempt under Section 8(1)(j) of the Act.

6. Aggrieved therefrom, the respondent preferred a second appeal to the CIC. The CIC allowed the appeal of the respondent vide order dated 12th January, 2011 supra holding that as far as the appellant UPSC is concerned, it receives references from the Ministries and Departments in disciplinary matters to give its comments and recommendations and had been consulted in the matter relating to Shri G.S. Narang also and offered its comments and views to the Government; whatever records are held by the appellant UPSC in this regard have to be disclosed because the same cannot be classified as personal information merely on the ground that it concerns some particular officer. Reference was made to the judgment of the Division Bench of the Kerala High Court in *Centre of Earth Science Studies Vs. Anson Sebastian* reported as AIR 2010 Ker 150 holding that information sought by an employee from his employer in respect of domestic enquiry and confidential reports of his colleagues would not amount to personal information within the meaning of Section 8(1)(j) of the Act. Accordingly the PIO of the appellant UPSC was directed to give inspection of the records sought to the

respondent and to also give photocopies of such record as may be required by the respondent.

7. The learned Single Judge dismissed the writ petition preferred by the appellant UPSC impugning the order of the CIC finding/observing/holding:-

- a. that personal information, to be exempt from disclosure under the Act should not have relation to any public activity, or to public interest and even if having relation to any public activity or public interest is not exempt where larger public interest justifies disclosure thereof;
- b. that a public authority as the appellant UPSC cannot have any personal information and cannot claim that any information held by it is personal to it;
- c. it is only the information submitted by an individual to a public authority and held by the public authority which is exempt from disclosure under Section 8(1)(j) of the Act;
- d. there is an inherent public interest involved in the discharge of its activities by the public authority; such information is thus not exempt from disclosure;
- e. that the function of the appellant UPSC of tendering advice to the concerned Ministries on matters relating to disciplinary proceedings against a charged officer is in discharge of a public duty entrusted to it by law and therefore a public activity;

- f. that the information sought in the present case does not relate to the privacy of the charged officer;
- g. that even otherwise the disclosure of such information would be in larger public interest, keeping in view the object of the Act;
- h. that the appellant UPSC in the matter of tendering such opinion/advice was not occupying the position of a trustee;
- i. that opinion/advice tendered by the public officials can be sought for under the Act provided the same have not been tendered in confidence/secretcy and in trust to the authority concerned;
- j. that the opinion/advice given by the appellant UPSC in the present case was not in confidence; and,
- k. that there is no merit in the plea of the appellant UPSC that disclosure of such opinion/advice would endanger the life and safety of the officers of the appellant UPSC who have tendered the same.

The appellant UPSC was however directed to examine the case with regard to the applicability of Section 10 of the Act, in relation to the names of the officers who may have acted in the process of opinion formation while dealing with the case of the charged officer Shri G.S. Narang.

It may also be noticed that the appellant UPSC, after the judgment had been reserved by the learned Single Judge, filed certain decisions of the CIC where information sought with regard to disciplinary proceedings of charged

officers was held to be exempt from disclosure under Section 8(1)(h) of the Act on the ground that the disciplinary proceedings/investigations were ongoing, and such disclosure would impede the process of investigation. The same however were not taken into consideration.

8. When this appeal came up first before us on 9th October, 2012 we invited attention of the counsels to the judgment dated 3rd October, 2012 of the Supreme Court in ***Girish Ramchandra Deshpande Vs. Central Information Commissioner*** reported as MANU/SC/0816/2012. The counsels had then sought time to study the judgment.

9. The Supreme Court in ***Girish Ramchandra Deshpande*** was concerned with disclosure by an employer of information pertaining to the service career of an employee and of details of his assets and liabilities. The information sought comprised of copies of all memos, show cause notices and censure/punishment awarded to the employee from his employer. The Supreme Court held:-

“13. We are in agreement with the CIC and the courts below that the details called for by the Petitioner i.e. copies of all memos issued to the third Respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in Clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of

privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the Petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The Petitioner in the instant case has not made a *bona fide* public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

16. We are, therefore, of the view that the Petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

10. We had therefore asked the counsel for the respondent as to whether the present controversy was not squarely covered by the said recent dicta of the Supreme Court.

11. The counsel for the respondent has argued that in the case before the Supreme Court the CIC itself had denied the information while in the

present case CIC itself has allowed the information. To our mind the same is irrelevant. The counsel for the respondent has next sought to take us through the reasoning given by the learned Single Judge. However in the light of the dicta aforesaid of the Supreme Court and which if applicable to the facts of the present case is binding on this Bench, we are not required to go into the correctness or otherwise of the reasoning given by the learned Single Judge. Faced therewith the counsel for the respondent has lastly contended that the appellant UPSC in the present case is not the employer of the officer Shri G.S. Narang, information pertaining to whom was sought and the principle laid down by the Supreme Court is applicable to the employer only. We however fail to see the difference. The ratio of the dicta aforesaid of the Supreme Court is that the disciplinary orders and the documents in the course of disciplinary proceedings are personal information within the meaning of Section 8(1)(j) and the disclosure of which normally has no relationship to any public activities or public interest and disclosure of which would cause unwarranted invasion of the privacy of an individual. Though the appellant UPSC is not the employer of Shri G.S. Narang, information pertaining to whom is sought by the respondent, but his employer had sought the advice/opinion/recommendation of the appellant UPSC in the matter of disciplinary proceedings against the said Shri G.S. Narang and we fail to see as to how it makes a difference whether the information relating to disciplinary proceedings is sought from the employer or from the consultant of the employer. What is exempt in the hands of the employer would certainly be exempt in the hands of consultant of the employer also. The advice given by the appellant UPSC would necessarily pertain to the

disciplinary action against Shri G.S. Narang. Section 8(1)(j) exempts from disclosure personal information, irrespective of with whom it is possessed and from whom disclosure thereof is sought.

12. The respondent at no stage set-up a case of the said personal information being required in public interest. In fact when we asked the counsel for the respondent as to what was the public interest in which the said personal information was sought, he replied by stating that an information seeker under the Act is not required to state the reasons for seeking the information. That being the position, the need for any discussion further on the said aspect does not arise.

13. We therefore, following the dicta in *Girish Ramchandra Deshpande*, set aside the judgment dated 13th July, 2012 of the learned Single Judge and allow the writ petition preferred by the appellant UPSC, consequently setting aside the order dated 12th January, 2011 of the CIC.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 6, 2012

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